SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Kristyn Emery v. Sault Tribe Housing Authority

APP-2025-01

Decided: September 4, 2025

BEFORE: BIRON, BUTTS, CORBIERE, DIETZ AND DEMOORE, Appellate Judges.

Opinion and Order

Biron, Karrie Chief Appellate Judge, who is joined by Appellate Judge Butts, Corbiere, Dietz and DeMoore.

For the reasons explained below, the Sault Ste. Marie Tribal Court ("Tribal Court") Landlord Tenant Judgment, May 19, 2025 ("*Default Judgment*") resulting in a money judgment against the Appellant and, ultimately a Writ of Restitution *(Writ)* for possession of the premises located at 3404 Gijik, Escanaba, Michigan 49829 is reversed and vacated as to the eviction.

Facts and Procedural History

Defendant/Appellant Kristyn L. Emery is a tenant of Plaintiff/Appellee Sault Tribe Housing Authority ("*Authority*") with a Dwelling Lease Agreement ("*Agreement*"), dated March 4, 2024.

Sometime between January 14, 2025 and March 11, 2025, Appellant accumulated $290.77 in unpaid utility bills in violation of her *Agreement*.

On March 20, 2025, the *Authority* issued and served a Notice to Quit – Non Payment of Utility *("Notice to Quit")* to the Appellant.

On April 15, 2025, Appellant was sent a notice stating, pertinent part:

> The Court Complaint process has started for the Lease Violation of **Section II(A), Section VII(A)1, and Section II(C) Restore of Escanaba Utilities back into your name; completed and bills that are due as a result of Utilities that were in the Sault Tribe's name; bills due for 1/14/2025 – 3/11/2025**…

On April 28, 2025, the *Authority* filed a Landlord-Tenant Complaint against Appellant with the Tribal Court seeking a money judgment in the amount of $320.77. That amount was derived from utility bills mailed to the *Authority* on February 27, 2025 for $196.02 due on or before March

25, 2025 and a final bill not dated but with a service end date of March 11, 2025 for $290.77, which included a $196.02 past due amount and additional charges of $94.75 due on or before April 25, 2025 plus $30 court costs.

On May 19, 2025, after noticing a "Pre-Trial Conference"[1] for that date, and hearing testimony from the Appellee, the Tribal Court issued a *Default Judgment* in favor of Appellee in the amount of $320.77 and afforded Appellant (who had failed to appear) 10 days to rectify the conditions, which included paying the *Default Judgment* in full. The *Default Judgment* was served on Appellant on May 19, 2025 by ordinary mail as indicated in the Certificate of Mailing contained within the same.

On June 4, 2025, Appellee made application for a *Writ* declaring that the Appellant had failed to comply with the *Default Judgment*.

On June 5, 2025, a *Writ* was issued directing the "Sault Ste. Marie Tribal Department of Public Safety…. To remove the above-named [Appellant] and other occupants from the premises…"

Based on Appellant's June 13, 2025 *Request for Stay of Eviction Proceedings* and the *Order Granting Defendant's Request for Stay* of the same date, it appears that the *Writ* was served on the Appellant between June 5, 2025 and June 13, 2025 but there is no completed return in the respective files of this Court or the Tribal Court.

On June 13, 2025, Appellant Emery filed a *Notice of Appeal* related to the *Default Judgment*, requesting that she and her three children be allowed to stay in their home, citing:

> 5. An appeal of this case is requested under Chapter 82 of the Tribal Code, Appeals, for the following limited reasons:
>
> (b) Irregularities or improprieties in the proceedings, or by the Tribal Court, the jury, any witnesses, or any party substantially prejudicial to the rights of the plaintiff/defendant, or other.
>
> (c) Any ruling, order, decision or abuse of discretion which prevented a fair hearing or trial.
>
> (d) Insufficient evidence to support the verdict, decision, order or judgment of the jury or Tribal Court.
>
> (e) An error of law substantially prejudicial to the rights of the appellant.

On June 13, 2025, Appellant also filed a *Motion to Stay Proceedings* with the Tribal Court. On the same date, the Tribal Court issued its *Order Granting Appellant's Request For Stay*. On June 24, 2025, this Court issued a *Notice of Briefing Schedule.*

[1] The *Summons* in this matter set a "Pre-Trial Conference" while the transcript of the hearing designates the hearing as a "Pretrial Hearing." In this Opinion, this Court will use each term referencing the same event in its relevant context.

On July 24, 2025, Appellant timely filed a *Brief ("Appellant's Brief")*, which originally went into a "junk" email box at the Tribal Court and was not discovered until August 8, 2025.

On August 4, 2025, Appellee filed a *Motion to Dismiss ("Motion to Dismiss")* and *Brief in Support.*

On August 14, 2025, after discovery of *Appellant's Brief*, this Court issued an *Interim Order Pending Oral Arguments* finding that *Appellant's Brief* was timely filed and further, that Appellee's[2] *Motion to Dismiss* was accepted as its brief and that oral arguments would be heard on September 4, 2025.

On August 25, 2025, Appellant filed a *Response to Motion to Dismiss.*

On August 26, 2025, Appellee filed an *Objection to Appellant's Brief and Request for Written Order on Motion to Dismiss Prior to Oral Arguments* and *Brief in Support of Objection to Appellant's Brief and Request for Written Order on Motion to Dismiss Prior to Oral Arguments.*

On September 2, 2025, this Court entered an *Order Denying Appellee's Motion to Dismiss, Overruling Appellee's Objection to Appellant's Brief & Requiring Oral Argument.*

On September 4, 2025 both parties appeared and presented their oral arguments before this Court.

The Tribal Court Administrator confirms that the *Authority* advises that Appellant's account with housing has been paid and is in good standing at this time.

As of the date of this Opinion and Order, no Satisfaction of Judgment has been filed with the Tribal Court.

Jurisdiction

Any person adversely affected by a decision of the Tribal Court in a civil case may appeal. STC § 82.110. An appeal is properly before this Court if it is a final decision of the Tribal Court or an order "affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made." STC § 82.111. A judgment in a landlord/tenant matter constitutes a final order of the Tribal Court. *Sharp v. Sault Tribe Housing Authority,* APP-2024-02 at 3 (July 23, 2024). As contemplated by Tribal law, an instrument to execute the judgment is required pursuant to STC § 83.708.

Standard of Review

Matters on appeal involving a conclusion of law are reviewed *de novo*. STC § 82.124(5). Matters committed to the discretion of the Tribal Court shall not be subject to the judgment of the Court of Appeals. STC § 82.124(8). Thus, unless otherwise set forth in Tribal law, matters involving findings of fact by the Tribal Court and matters resulting in a default judgment *(Sharp,*

[2] This Court notes an inadvertent error in the August 14, 2025 *Interim Order Pending Oral Arguments* in which it refers to the *Motion to Dismiss* as the Appellant's filing rather than the Appellee's motion.

supra) are reviewed under the clearly erroneous standard. In applying the clearly erroneous standard of review, the court will determine whether it is left with a "definite and firm conviction" that the trial court made an error in its findings of fact. *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02 at 3 (August 4, 2008).[3] This Court gives regard to the special opportunity of the Tribal Court to assess the credibility of the witnesses who appear before it and will not substitute its judgment for that of the Tribal Court unless such credibility determinations are clearly erroneous. *Stewart v. Fuller*, APP-2023-08 (March 4, 2024).[4]

"[S]pecial consideration is given to tenants of public housing/Indian Housing Authority units to resolve disputes." (*Sharp, supra* at 8). As this Court further explained:

> To be sure, as a matter of Tribal law, tribal housing tenants are given more time and more chances to comply than any other tenant who may be subject to the jurisdiction of the Tribe under Chapter 83. This is so because the ultimate charge of the Appellee, the Sault Tribe Housing Authority, is to provide safe and affordable housing to Tribal Members[5] taking into consideration the unique circumstances that effect Tribal members, their families and their housing situations.
>
> **83.802 Termination/Eviction Requirements.**
>
> Where the landlord is the public housing/Indian housing authority, **the agreement may be terminated under Subchapter IV and the tenant evicted under Subchapter V only where there is serious or repeated violations of the terms or conditions of the agreement or for other good cause**…

Further, where there is a conflict between the terms of a lease agreement and Tribal law/other law, STC § 83.302 provides, as follows:

> **83.302 <u>Effect of Any Agreement Regarding Dwellings</u>**.
> **<u>Unless an agreement or an applicable provision of the agreement is clearly contrary to this Chapter or the laws identified in 83.104 or 83.301, the agreement or provision will govern</u>** the rights and obligations of any party before the Tribal Court and the Tribal Court must grant the

[3] The US Supreme Court has held that a finding is "clearly erroneous" when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Company*, 333 U. S. 364, 395, 68 S. Ct. 525, 541, 92 L. Ed. 746 (1947).

[4] This Court does note that some federal courts of appeal have stated that when a trial court's findings do not rest on demeanor evidence and evaluation of a witness' credibility, there is no reason to defer to the trial court's findings and the appellate court more readily can find them to be clearly erroneous. See, e.g., *Marcum v. United States*, 621 F.2d 142, 144–45 (5th Cir. 1980). Others go further, holding that appellate review may be had without application of the "clearly erroneous" test since the appellate court is in as good a position as the trial court to review a purely documentary record. See, e.g., *Lydle v. United States*, 635 F.2d 763, 765 n. 1 (6th Cir. 1981)

[5] https://www.saulttribehousing.com/about_us/history_of_housing.php

> relief provided for in the agreement according to its terms…(**emphasis added**).

Moreover, the Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi'idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) guide this Court's decision-making. *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 at 8 (December 5, 2022).

Discussion

On the present facts, Appellant filed an appeal with this Court from the *Default Judgment* entered by the Tribal Court on May 19, 2025. The *Default Judgment* is a final order from which an appeal to this Court is proper. *Sharp, supra.*

Guided by Honorable Judge Elizabeth Dietz, our Elder Tribal Member panelist and Pipe Carrier for the Women's Lodge, we find ourselves at the intersection of law, civil procedure, and *Anishanaabe* teachings. After reviewing the record and hearing oral argument, Judge Dietz counsels:

> It bothered me that the Landlord Tenant Codes were so disregarded. These seem to be ignored in the casual handling of correspondence with the Appellant and the lack of extra care and help said to be used in helping a fellow tribal member to understand what we wanted from her. She desperately wanted to comply but seemed to be "left hanging." Culturally we know people are more valuable than things, yet we have a young mother with three young children opening her door to find, without notice to social workers to help her children,[6] armed police, staring neighbors, frightened Appellant when she thought she had done everything right. She was dragged out with the children and the doors locked. She ended up sleeping in a park overnight. Is this who we have become as a people? Where are the Seven Grandfather Teachings, where are the kind women all helping one another, the compassion, the love, the sense of Tribe? All over $320.00! And the Appellant tried to give the money per her testimony and the Housing people wouldn't take it.[7] We need to be more helpful and loving to each other.[8]

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[6] Reference the content at (Oral Argument, Emery, 19:10-20:00).

[7] At the time of Oral Argument in this matter, counsel for Appellee confirmed "And, to clarify the question presented by Miss Emery on the day Housing was there to grant the eviction, the question was 'If I pay, can I stay in the home.' And, the…answer was 'No. Absolutely not. We have every legal right to evict you from this home…'" (Oral Argument, Elliott, 28:35-28:56).

[8] In pertinent part, STC § 83.103 provides that:
This Chapter shall be liberally interpreted and construed to fulfill the following purposes:
(2) to preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the reservation;

It is against this backdrop that we undertake our analysis and review of the landlord tenant matter before us along with the statutory requirement in Tribal law that states eviction is proper "**only where there is serious or repeated violations of the terms or conditions of the agreement or for other good cause** (**emphasis added**)…" STC § 83.802. In addition, actions involving any proceeding under Chapter 83 of the Sault Tribe Code require the moving party to prove the allegations in their complaint by clear and convincing evidence. STC § 83.705.

a. Issues of Fact

This Court notes that the Tribal Court file relative to this matter and a preceding case made known to this Court via the Tribal Court transcript, Appellant's pleadings on appeal and the oral argument of Appellant and Appellee's counsel[9] contains documents with relevant information available to but not considered by the Tribal Court at the time of the Pretrial Hearing in this matter. Those documents and that information are the foundation of the clear error made in this matter. Therefore, that information and those documents, in pertinent part, will be reviewed here.

As was referenced on oral argument before this Court and in the Pretrial Hearing Transcript, the Tribal Court files confirm that Appellant satisfied a previous Tribal Court Judgment (Case No. LT-2025-06) entered on **February 17, 2025** (*Landlord-Tenant Judgment, February 17, 2025*) in the amount of $502.87 on **March 18, 2025** for unpaid utilities with due dates from **December 25, 2024 through February 2025** that she incurred at the subject premises rented from the Tribe (3404 Gijik, Escanaba) **while those utilities were being billed to the Sault Tribe Housing Authority**. Per the Judgment, Appellant's utilities were thereafter **restored back into her own name** (**emphasis added**).

On **March 20, 2025**, the *Authority* issued a *Notice to Quit* to Appellant seeking payment for "utility charges owed" **in the amount of $196.02.** (Plaintiff's Pretrial Hearing Exhibit 2). It is worth noting the overlap between the March 20, 2025 *Notice to Quit* and the March 18, 2025 *Satisfaction of Judgment.* The dates on the bill attached to the *Notice to Quit* clearly reflect that the charges arose out of the same time period as the facts and circumstances of Case No. LT-2025-06. Moreover, the date stamp on the bill demonstrates that it was in Appellee's possession at the time of the issuance of the *Satisfaction of Judgment*.

That *Notice to Quit* states, in relevant part and bolded, as follows:

> **"If you have already restored the utility in your name, please disregard this notice."**

At the Pretrial Hearing to follow in the matter now before this Court, Gerry Brow, the *Authority's* Collections Specialist acknowledged that the referenced *Notice to Quit*, dated March 20, 2025, accurately reflect(s) the *Notice to Quit* that was sent in this matter. (Pretrial Hearing Tr. 6:25).

Ms. Brow also acknowledges:

[9] Reference the content at (Oral Argument, Elliott, 37:18-37:26) and (Oral Argument, Emery, 45:57-46:50; 48:00-48.10).

> A...For quite some time Ms. Emery's utilities had been in the Sault Tribe Housing's name…**since that time she did have her utilities restored into her name, but Housing did pay a final bill during that timeframe** on her behalf so we are seeking…those monies back.
>
> Q. And, how much was that final bill?
>
> A. …there was…**two actual finals bills that came in from the cycle** (**emphasis added**)…"
> (Pretrial Hearing Tr. 6: 1-10)

Further, the utility billing in the amount of $196.02 attached to the *Notice to Quit* and marked as Plaintiff's Pretrial Hearing Exhibit 2 shows a due date of **March 25, 2026**. In other words, at the time of the issuance of the *Notice to Quit*, **the referenced bill was not yet due**.

The other utility billing attached as part of Plaintiff's Pretrial Exhibit 2 in the amount of $290.77, inclusive of the $196.02 billing, shows a due date of **April 25, 2025**.

On **April 15, 2025**, Gerry Brow for the *Authority*, wrote a letter ("*April 15 Letter*") to Appellant advising that she had utility bills "due as a result of Utilities (sic) **that were in the Sault Tribe's name**; bills due for **1/14/2025-3/11/2025**…**with a total amount due as of today $320.77** (**emphasis added**)*..."*

This Court takes note that the amount deemed owed in the referenced *April 15 Letter* ($320.77) is $124.75 more than the amount set forth as owed in the *Notice to Quit* ($190.02) without any documented explanation at the time of the *April 15 Letter* as to the reason for the difference/increase in the amount due.

On **April 28, 2025**, the Complaint (assigned Case No. LT-2025-33) on appeal here was filed by the *Authority* seeking a money judgment in the amount of $320.77. That Complaint alleges in Paragraph 13, as follows:

> "13. That there is:
> a. ☒ **no other** pending or **resolved civil action arising out of the same transaction or occurrence alleged in this complaint** (**emphasis added**);"

Per Ms. Brow's testimony at the Pretrial Hearing and per her *April 15 Letter*, the unpaid utilities that are the subject of the present matter clearly arose out of the time period when Appellant's utilities were in the Sault Tribe's name, which was the subject of the civil action referenced at the Pretrial Hearing and resolved via the Satisfaction of Judgment entered on March 18, 2025. *("Satisfaction of Judgment")*. As such, allegation 13 in the Complaint was not fully transparent nor did it provide necessary, broad context to the Tribal Court in support of its decision making. That context was, however, otherwise available to the Tribal Court in the Court's files.

At the Pretrial Hearing, the Tribal Court Judge also questioned Ms. Brow, as follows:

> THE COURT: In this matter the…Ms. Brow, you indicated that **some payments have been made but…the $290.77 is over and above those payments; correct?**
>
> THE WITNESS: **Correct. During that time…in getting their utilities restored back into their name there was a final bill that had already been cycled and sent to Housing**.
>
> THE COURT: **And…the utilities are in her name now?**
>
> THE WITNESS: **Yes they are current (emphasis added).**
> (Pretrial Hearing Tr. 7:21-25; 8:1-6)

The foregoing chronology supports Appellant's professed confusion reported to this Court on appeal as to why she owed money when she had just satisfied a judgment on March 18, 2025:

> In my opinion, this is a bill that would've been taken care of at the same time I was involved in another situation involving Housing (sic) and Utilities (sic). I paid out over $1,600 then. This could've and, by the dates of the bill and stamped "Received" by Housing, it should have been included then. The date they had the bill in their possession was 03/06/25. I feel and have been so confused about this.
> (Notice of Appeal Attachment, June 13, 2025).

In *Appellant's Brief* filed via email on July 24, 2025, she further explained:

> I believed that this situation stemmed from a utility issue earlier in the year, around February and March. At that time, I was told a money order hadn't been received, though I trusted that it would be. Eventually, I received several different amounts from Gerri Brow regarding what was owed and I was told it was for "damages." However, no clear explanation was given, and the last utility bill I had after resolving the earlier situation was only around $74…
>
> I was even more confused when I learned that the bill in question was stamped as received in her office on March 6 – well before the previous judgment was officially satisfied on March 18. I don't understand why this bill wasn't included in that case when I was actively making payments and resolving issues with utilities, Sault Tribe Housing, and the Court.

And, again, in Appellant's *Response to Motion to Dismiss*, dated August 25, 2025, she reiterated:

> In the time leading up to the eviction, I also had conversations with Gerry Brow from the Housing Authority. She told me that I owed money for damages, but the amount changed more than once, and I was confused about what those damages were for. At first, she even mentioned that a money order from a previous court matter had not been received, but later the explanation changed. By the time of the eviction, I actually had the money on hand, but she would not accept it. I understand that by then it may have been too late, but I never received a clear explanation of why I owed additional money, especially since I had just paid more than $1,600 to remain in my home in connection with a previous matter.

Appellant's arguments on appeal were consistent with the foregoing. (Oral Argument, Emery, 45:57-48:44).

The Complaint also alleges:

> "3. That Defendant(s) has violated the follows (sic) provision of his or her lease: Section VII (A) 1 and Section II (C)."

The referenced Section II(C) of the subject Dwelling Lease Agreement, dated March 5, 2024, and marked as Plaintiff's Pretrial Hearing Exhibit 1, provides as follows at 2-3:

> II. PAYMENT DUE UNDER THE LEASE
>
> (C) UTILITIES. It is the Tenant's responsibility to pay for utilities (water, (electric, gas and garbage removal, if applicable) and to maintain utility service. Failure to do so is just cause for termination of Lease. **If any utility is Shut-off or service disrupted, the Tenant will be in violation of the Lease. Landlord will send a Seven-Day (7) Notice to Quit when a shut-off notice is received**, and the Tenant may be temporarily removed and/or permanently evicted by court order. The tenant will be charged the cost of any utility bill paid on behalf of the tenant. The Tenant must pay the total amount due within Fourteen (14) days of the date on the Landlord's notice. If the utility is shut-off the Tenant will be responsible for any damages to the unit and premises resulting from a Utility being shut off (**emphasis added**).

This Court notes that there is nothing in the Court file or the record to suggest that Appellant's utility service had been shut off or service disrupted when the *Notice to Quit* in this matter issued. In fact, when the *Notice to Quit* issued on March 20, 2025, the bill in the amount of $196.02 cited in the *Notice to Quit* was not yet due. Indeed, the Appellee testified at the Pretrial Hearing that the utilities had been restored into the name of the Appellant and that the account was current, yet the *Default Judgment* proceeded.

> **THE COURT: And…the utilities are in her name now?**

THE WITNESS: <u>Yes they are current (emphasis added)</u>.
(Pretrial Hearing Tr. 8:1-6)

It should also be noted that the *Notice to Quit* in this matter issued **<u>just two days</u>** after Appellant satisfied the Landlord-Tenant Judgment on **March 18, 2025** (*Satisfaction of Judgment*) in Case No. LT-2025-06 entered on February 17, 2025 in the amount of $502.87. Yet, at the May 19, 2025 Pretrial Hearing, Ms. Brow testified:

> Q. Has there been any recent payment made on behalf of the Respondent?
>
> A. No, there has not.
> (Pretrial Hearing Tr. 7:13-15).

Again, this Court observes that this testimony was not fully transparent given the above-referenced payments recently made by Appellant in connection with Case No. LT-2025-06 and, accordingly, did not provide relevant context to the Tribal Court in support of its decision making.

At the Pretrial Hearing, Ms. Brow also testified, in pertinent part, as follows:

> Q. And has there been any attempt made on behalf of…Sault Housing Authority to resolve this matter outside of the court proceedings?
>
> A. Yes. …I'm very adamant about trying to reach the tenants … by phone calls; reaching out leaving multiple messages with no response on her behalf."
> (Pretrial Hearing Tr. 6:11-16).

The testimony provides no specific dates, number of calls or visits and no documentation of what was done in this specific case. While counsel for Appellee on oral argument held up a stack of papers apparently suggesting that those papers contained documentation of such contacts, the content of that material is not a part of the record before us. (Oral Argument, Elliott, 32:42-33.06).

The dearth of records presented to and considered by the Tribal Court in the present case stands in contrast to the record considered in *Sharp, supra*. In that case, Plaintiff/Appellee Sault Tribe Housing Authority sought a money judgment in the amount of $54.72 and to rectify conditions for lease violations pursuant to Chapter 83 of the Tribal Court. In pertinent part, this Court noted at 1 that:

> The *Complaint* was accompanied by a 27-page attachment *("Complaint Attachment")* that included correspondence dated January 4, 2024 notifying the Appellant of the Appellee's intent to file the Complaint and the options available to her to prevent the filing of the *Complaint* (*"January 4, 2024 Correspondence*"), a November 16, 2023 Notice to Quit/Violation of Lease/Reason to Believe for unrectified conditions of an unauthorized occupant residing in the home as well as correspondence dated October 17, 2023 regarding the same. (*Complaint Attachment* at 1-5). The *Complaint*

> *Attachment* also included evidence that the Appellant received at least five (5) additional notices regarding her lease obligations and requirement to report unauthorized occupants in the home before the filing of the *Complaint*. (*Complaint Attachment* at 6-14). In addition, the *Complaint Attachment* included a December 20, 2023 Notice to Quit for failure to pay her utility bill. (*Complaint Attachment* at 15).

In *Sharp*, the Defendant/Appellant appeared at the "Pre-Trial Hearing" and requested a full Evidentiary Hearing, which the Trial Court ordered. Defendant/Appellant Sharp did not appear at the Evidentiary Hearing and a default entered. While the default outcome in *Sharp* mirrors the outcome on the present facts, the dearth of records considered is a key distinguishing factor. Another distinguishing factor is that Defendant/Appellant Sharp was afforded a hearing post Pre-Trial. In the case before us, the "Pretrial Hearing" noticed as a "Pre-Trial Conference" (*Summons*, 4-28-2025) was effectively an evidentiary hearing that resulted in a *Default Judgment*.

b. Issues of Law

1. Initial Disclosures and Ethical Considerations.

STC § 81.211 provides that FRCP 26 guides matters in Tribal Court for discovery, including FRCP 26(a)(1) which requires, among other pertinent information, the initial disclosure of relevant information for the purpose of transparency and efficiency in litigation by ensuring that both parties have access to key information early in the case. This helps avoid surprise, narrows issues, and facilitates settlement discussions in litigation.

Moreover, attorneys licensed to practice in the State of Michigan have a duty of candor to the tribunal. Michigan Rules of Professional Conduct 3.3 prohibits the withholding of material information from the tribunal when doing so would result in misleading the court or violating their obligation of candor. MRPC 3.3 and related rules require disclosure of material facts necessary for the tribunal's informed decision-making even when such information conflicts with their client's interest. The existence of a companion case, as in this matter, is such a material fact. The fact that it occurred in Tribal Court rather than a State of Michigan tribunal is of no consequence as the Michigan Rules of Professional Conduct remain applicable.

Therefore, those who appear before this Tribal Court are reasonably expected to adhere to the ethical obligations accompanying their license to practice law. These include but are not limited to the duties of: Competence (MRCP 1.1); Diligence (MRCP 1.3); Communication (MRCP 1.4); Confidentiality (MRCP 1.6); Candor toward the Tribunal; Fairness to Opposing Party and Counsel (MRCP 3.4); Avoid Conflicts of Interest (MRCP 1.7-1.9); Truthfulness in Statements to Others (MRPC 4.1); Reporting Professional Misconduct (MRPC 8.3); and Avoiding Conduct Prejudicial to Justice (MRPC 8.4).

While this Court is sometimes challenged within the current system of Tribal government, exercising only authority delegated by the Tribe's Board of Directors through Tribal law, an inability to address some matters of constitutionality, inconsistencies in the Tribal Code and lack of judicial infrastructure, there is much that it continues to do in service to the Tribal community.

Indeed, the Tribal Court is one of the primary mechanisms through which this Tribe exercises its sovereignty – the right to make its own laws and be governed by them. It is the forum in which disputes among members and non-members are respectfully decided with an even hand, where expression of self-governance occurs by applying tribal law and customs to facts and circumstances, where preservation of cultural integrity happens through incorporation of restorative justice and traditional dispute resolution; where reliance of dependency on state and federal systems, which historically undermine tribal autonomy, is reduced; and where public safety is enhanced within the community through the exercise of criminal jurisdiction.

Hence, the Tribal Court is a cornerstone of tribal sovereignty that operationalizes inherent self-governing authority within this Tribal community.[10] The Tribal Court protects cultural values and provides a forum where justice can be served. Federal statutes and U.S. Supreme Court case law affirm this fact by upholding sovereign immunity,[11] allowing for expanded criminal jurisdiction over non-members for certain crimes,[12] requiring the exhaustion of Tribal Court remedies[13] and more,[14] making the continued support and development of the Tribal Court system critical to tribal self-determination.[15]

Minadendmowin, (respect – act without harm), one of the Seven Grandfather Teachings, is an inherent responsibility of each member of the Tribal community and essential to Tribal community wellbeing. As such, Tribal attorneys who are Officers of the Court and community leaders, must model ongoing respect for the Tribal Court by affirmatively embracing full compliance with all rules of professional conduct. The consistent practice of *minadendmowin* by Tribal attorneys in the practice of law is foundational to community respect for the Tribal Court system and to Tribal sovereignty while simultaneously prompting respect among all who come before this body.

2. Erroneous Tribal Court Procedures.

This Court's review of the Tribal Code, including but not limited to STC Chapter 83, does not reveal any "Pre-Trial Conference" provision, as per the *Summons* here. There is, however, a "Scheduling Conference" provision in Tribal Code Chapter 81: Civil Jurisdiction and Procedure. This Court takes judicial notice that a "scheduling conference" is a designation commonly used

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[10] *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987).

[11] *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506 (1940); *Puyallup Tribe, Inc. v. Dep't of Game of Wash*., 433 U.S. 165 (1977); S*anta Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering,* 476 U.S. 877 (1986); *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla*., 498 U.S. 505 (1991); *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc*., 523 U.S. 751 (1998); and *Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014).

[12] Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127, Stat. 54 (2013) and Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, div. W, 136 Stat. 49 (2022).

[13] *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985) and *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987).

[14] *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, 579 U.S. 545, 136 S. Ct. 2159 (2016) (per curiam) (upholding Tribal Court jurisdiction over non-members).

[15]Matthew L.M. Fletcher, The Three Lives of Mamengwaa: Toward an Indigenous Canon of Construction, Yale L.J. (2025); https://yalelawjournal.org/pdf/134.1.Fletcher_snh69bfe.pdf (examining this Court's decision at p. 748-51 in *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02).

interchangeably in legal practice with a pre-trial conference.[16] The relevant Tribal Code provision provides, as follows:

> **81.210 <u>Scheduling Conference</u>**.
> Upon the filing of an answer or other responsive pleading, or upon the expiration of the time for filing an answer in the event that one is not filed, the Tribal Court shall call a scheduling conference with the parties **<u>to determine the time period for conducting pretrial matters and to schedule a trial</u>**. Notice of such conference shall be transmitted by mail by the clerk to counsel for the parties, or to the parties themselves if no appearance has been filed on behalf of a party *<u>(emphasis added)</u>*.

As such, a pretrial/scheduling conference signals a procedural gathering that precedes a hearing or trial on the merits.

Accordingly, STC § 81.212 provides that, "All trials shall be conducted to the Tribal Court, without a jury. The trial judge shall serve as the fact finder."

As to landlord tenant hearings, STC § 83.706 provides, as follows:

> **83.706 <u>Judgment</u>**
> (2) If a tenant fails to appear in person or in writing on or before the date of appearance, the Tribal Court must enter judgment on behalf of the plaintiff **<u>following a hearing to determine whether relief should be granted</u>** and the kind of relief that should be granted (**<u>emphasis added</u>**).

In contrast, STC § 83.703 provides that "Extensive, prolonged, or time-consuming discovery and **<u>prehearing proceedings will not be permitted</u>**, except in the interests of justice and for good cause shown by the moving party (**<u>emphasis added</u>**)."

While STC § 83.706 leaves this Code chapter unclear as to the requirements, format and proper procedural forum for the "hearing" referenced there, STC § 83.703 indicates that "prehearing proceedings" are **<u>not permitted</u>** "except in the interest of justice and for good cause shown by the moving party." This Court finds that such a showing did not occur in the present matter. Further, while the *Summons* for the Pre-Trial Conference in this case indicates that "If you fail to appear or otherwise answer, a default judgment may be entered against you for the relief required in the complaint," this Court can find no support in the Tribal Code for the procedure followed in this case to the legal detriment of the Appellant, i.e. hearing, case disposition and entry of a Judgment of Default by the Tribal Court at an appearance noticed as a "Pre-Trial Conference."

This Court finds that overall, Subchapter VII of Chapter 83 lacks clarity regarding the hearing requirements in landlord tenant cases and, overall, fails to meet Constitutional muster.

[16] Pursuant to STC § 81.201 and STC § 81.105(1), a reference to Rule 16 of the Federal Rules of Civil Procedure is instructive. Rule 16 includes scheduling along with numerous other aspects of case management (but not case disposition) as component parts of a pre-trial conference.

Article VIII of the Constitution of the Sault Ste. Marie Tribe of Chippewa Indian provides:

> "All members of the Sault Ste. Marie Tribe of Chippewa Indians shall be accorded equal protection of the law under this constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including but not limited to …freedom of speech,…**and due process of law**. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77) against actions of an Indian entity in the exercise of its powers of self-government shall apply to members of the tribe (**emphasis added**). (*Constitution* at 8).

As such, "due process protections apply to the Tribe by virtue of the Indian Civil Rights Act, which the Tribe incorporates into tribal law at Article VIII of the Tribe's Constitution and Bylaws." *Hollowell v. Elections Commission*, APP 14-02 at 3 (2014).

Of significant importance is that this Court has previously held that due process mandates clarity of understanding as to what the Code requires. *Payment, supra* at 11. Such clarity proactively avoids inadvertent inconsistency in the treatment of parties as well as the irreconcilable application of Code provisions (as exemplified in *Sharp*, *supra* versus the present case), promotes foreseeability and compliance *(Id.)* and is a key component of affording due process to litigants.[17] Indeed, this Court would run afoul of nibwaakaawin (wisdom-use of good sense)and ayaangwaamizi (careful and cautious consideration) if it did not address, albeit sua sponte, that the lack of clarity of court procedures used to resolve landlord tenant matters rises to the level of Constitutional concern when the end result runs afoul of Tribal Members' due process rights of notice and an opportunity to be heard before being deprived of a statutory right to housing.

Further, following entry of the *Default Judgment* in the amount of $320.77 in this matter on May 19, 2025, a *Writ* issued on June 4, 2025. While Appellant was evicted pursuant to the *Writ*, the *Default Judgment* was not properly executed as there is no return on the *Writ* as required STC § 83.708:

> **STC § 83.708 Execution of Judgment.**
> Any judgment may be immediately executed, and the judgments and orders of the Court must be enforced by a duly-authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. **Any law enforcement officer must**, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and **make a report to the Court on what was done to enforce it**. Any law enforcement officer to whom a judgment order is given for enforcement who fails or refuses to execute it shall be subject

[17] As this Court explained in *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 at 5 (December 5, 2022), "It could be said that the application of the Ojibway talking circle principles speak to the essence of due process - a governmental respect for all individuals subject to its authority. Like other Indian communities, this respect can be pragmatically translated in legal proceedings to mean notice and the opportunity to be heard when the deprivation of property or liberty is at stake. (*Zephier v. Walters*, No. 15A06 (Cheyenne River Sioux Tribal Ct. of App. 2017)."

> to dismissal from employment and the payment of reasonable damages, costs and expenses to a party for failure to execute the judgment. This section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure Chapter (**emphasis added**).

c. Conclusions of the Court

Given the series of events above represented, which, despite Appellant's failure to appear at the noticed "Pre-Trial Conference," were referenced at the hearing, as above noted, well documented in the case file and thus available for the Tribal Court's review, fulsome consideration of the same is not reflected in the Pretrial Hearing Transcript and/or the *Default Judgment.* As such, the record was insufficient for the moving party to meet its burden of proof regarding the allegations of its Complaint by clear and convincing evidence. STC § 83.705. Absent consideration of the referenced case file materials and associated issues by the Tribal Court, a miscarriage of justice resulted.[18] Therefore, this Court, guided by *nibwaakaawin* (wisdom-use of good sense), and *ayaangwaamizi* (careful and cautious consideration) is of a "definite and firm conviction" that the Tribal Court erred in its finding of facts due to a failure to consider all of the facts available to the witness and in court file documents, which were critical to decision making in this matter, and in omitting to apply the special consideration required in matters regarding tenants of public housing/Indian Housing Authority units.[19] Accordingly, this Court finds that the findings of fact by the Tribal Court on the present facts were clearly erroneous.

Further, this Court respectfully finds that, as a matter of law, the practice of the Tribal Court entering a *Default Judgment* following what was effectively an evidentiary hearing conducted at a matter noticed as a "Pre-Trial Conference" finds no support in the Tribal Code. This Court also finds that the *Writ* in this matter was not, as a matter of law, properly executed as no return was filed.

This Court notes that the issue of the money judgment in the amount of $320.77 as set forth in the *Default Judgment* is not addressed in this Opinion and Order since Appellant's account with the *Authority* has been paid and is now in good standing.

Therefore, this court agrees, as alleged by Appellant, that there were irregularities in the proceedings and an error of law that were substantially prejudicial to her rights in this matter. The errors of fact and law, as above described, along with the insufficiency of Appellee's efforts toward a Tribal community member, as reflected in the record before this Court, culminated in an outcome resulting in a mother and three children being evicted from their home for the sum of $320.77. That process did not meet the legal standards applicable here nor did it meet the Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi'idiwin* (practice absolute kindness),

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[18] STC 82.125 Issues Preserved on Appeal, Section (1) provides:
In deciding an appeal, the Court of Appeals shall consider issues in accordance with the following requirements:
(1) Unless a miscarriage of justice would result, the Court of Appeals will not consider issues that were not raised before the Tribal Court (emphasis added).

[19] To echo the words of Honorable Judge Elizabeth Dietz offered at the outset of this Opinion, it is also worth noting that the Tribal Code at STC 83.704 (4) provides that "evidence of customs and traditions of the Tribe shall be freely admitted" in landlord tenant matters; it is observed that such consideration was not afforded on the present facts.

minadendmowin, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration), which always guide this Court's decision making. *Payment, supra.*

ORDER

For the reasons specified above, the Sault Ste. Marie Tribal Court Landlord Tenant Judgment, May 19, 2025 resulting in a money judgment against Appellant and, ultimately a Writ of Restitution for possession of the premises located at 3404 Gijik, Escanaba, Michigan 49829 is reversed and vacated as to the eviction.

It is SO ORDERED.